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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,670	04/05/2001	Moshe Brody		6750

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EXAMINER

PYZOCHA, MICHAEL J

ART UNIT	PAPER NUMBER
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2137

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/827,670

Applicant(s)

BRODY, MOSHE

Examiner

Michael Pyzocha

Art Unit

2137

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 30 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-9, 11, 13-24, 26 and 28-33.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
**MATTHEW SMITHERS**  
PRIMARY EXAMINER  
Art Unit 2137

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments submitted on 11/30/2005 have been considered, but are not persuasive. Applicant argues: there is no motivation to combine the references because the motivations do not explain reasonable specificity how the references should be combined and modified; there is no reasonable expectation of success in combining the references; and fails to teach all claim limitations.

With respect to Applicant's argument that there is no motivation to combine the references because the motivations do not explain reasonable specificity how the references should be combined and modified, the cited references use the particular features in their inventions because at the time of the invention it was well known in the art that the features provide desirable functionality (because they were used to enhance the cited references' inventions). Although there may also be undesirable characteristics of the particular features, the fact that the inventors use the features to perform a function in their invention shows the features to be desirable. For instance, it is suggested that the modified Rosen, Drummond, Menezes, Cook, and Muller system is modified to include Gong's secure Java applications because it protects the user. However, the implication that because Gong's secure Java applications can be undesirable under some circumstances does not change the reasoning that one of ordinary skill would have been reasonably motivated to use Gong's secure Java application in a similar system such as that of the modified Rosen, Drummond, Menezes, Cook, and Muller system for at least the reason of protecting the user, in light of the teachings of Gong. MPEP §706.02(j) states that "... there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." The inventions of the modified Rosen, Drummond, Menezes, Cook, and Muller system and Gong are analogous art because they are both directed to computers. Therefore, Gong's teaching that secure Java application protects the user considered in conjunction with the knowledge that one of ordinary skill would want to protect the user, suggests that motivation exists for one of ordinary skill to modify the modified Rosen, Drummond, Menezes, Cook, and Muller system to include Gong's secure Java application and that there is a reasonable expectation that Gong's secure Java application would function correctly. Within these arguments Applicant also argues there is inconsistent motivation with respect to Rosen. Rosen teaches a personalization incorporated within the information stream prior to the receipt of anything, whether it is software, or other data. Therefore it is not inconsistent to state the Rosen as modified with various references fails to disclose the information stream is associated with deliverable published software. Further Drummond teaches to "allow operation" which is access control not a usage restriction so it is therefore not a contradiction. However Applicant's own claims contradict themselves because claim 5 states the personalization is not associated with any usage restriction, while claim 15 states that invalid personalization with cause the program to terminate which is clearly restricting the usage based on the personalization.

With respect to Applicant's argument that there is no reasonable expectation of success in combining the references to provide additional security, the combination is of two well-known algorithms for providing security within two different aspects of security. Digital signatures allow a user to verify the originator of the data and to make sure it has not changed since the originator sent it. On the other hand the security taught by Gong teaches securing the code of a Java application. Therefore these algorithms are independent and are not creating a new algorithm that would require the extensive testing taught by Schneier.

With respect to Applicant's argument that fails to teach all claim limitations because "customer" is defined as an actual user or prospective user of software, and Rosen and Cook teach a customer is someone who makes a purchase from a merchant. In Rosen and Cook, this purchase is the information stream and when modified with Gong the information stream is published software. Therefore the customer in the presented combination is someone who is or will be a user of the software.